



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NATHEN BARTON,

Plaintiff

V.

LEADPOINT INC., RELIANCE FIRST
CAPITAL LLC, LOANDEPOT LLC,
GLOBAL EQUITY FINANCE INC.,
NATIONWIDE MORTGAGE BANKERS,
INC., JOHN DOE 1-10.

Defendant(s).

Case No.: 3:21-cv-05372-BHS-TLF

FIRST AMENDED COMPLAINT
FOR A CIVIL CASE

Jury Trial: Yes No

I. THE PARTIES TO THIS COMPLAINT

A. Plaintiff

| | |
|--------------------|------------------------------|
| Name | Nathen Barton |
| Street Address | 4618 NW 11 th Cir |
| City and County | Camas, Clark County |
| State and Zip Code | Washington 98607 |
| Telephone Number | (718) 710-5784 |

B. Defendant(s)

Defendant No. 1

LeadPoint, Inc.

Job or Title (*if known*)

1 Street Address 11801 Mississippi Ave, Suite 100
 2 City and County Los Angeles, Los Angeles County
 3 State and Zip Code CA 90025
 4 Telephone Number (310) 209 8600

5 Defendant No. 2

6 Name Reliance First Capital, LLC
 7 Job or Title (*if known*)
 8 Street Address 201 Old Country Road, Suite 205
 9 City and County Melville, Suffolk County
 State and Zip Code NY, 11747
 Telephone Number (866) 735-9004

10 Defendant No. 3

11 Name Global Equity Finance, Inc
 12 Job or Title (*if known*)
 13 Street Address 404 Camino Del Rio S Ste 300
 14 City and County San Diego, San Diego County
 15 State and Zip Code CA, 92108
 Telephone Number (800) 245-3279

16 Defendant No. 4

17 Name Nationwide Mortgage Bankers, Inc
 18 Job or Title (*if known*)
 19 Street Address 310 A Main Street
 20 City and County Lebanon
 21 State and Zip Code NJ 08833
 Telephone Number 833 700 8884

22 Defendant No. 5

23 Name John Doe 1-10
 24 Job or Title (*if known*)
 Street Address Unknown

| | | |
|---|--------------------|---------|
| 1 | City and County | Unknown |
| 2 | State and Zip Code | Unknown |
| 3 | Telephone Number | Unknown |

4 II. BASIS FOR JURISDICTION

5 Plaintiff Nathen Barton is a natural person and full time resident of Clark County,
 6 Washington. All the acts alleged in this complaint occurred in Clark County, Washington State,
 7 during the year 2021.

8 Jurisdiction in this court is correct because of where Plaintiff resides, his residence is a
 9 nexus where Plaintiff suffered personal injury and invasion of privacy at the hands of the
 10 Defendants, and Plaintiff is suing in part under federal statute the Telephone Consumer
 11 Protection Act of 1991, known as the TCPA, giving rise to a lawsuit that may be brought in
 12 Federal Court pursuant to Mims v. Arrow Fin. Services, LLC.

13 III. STATEMENT OF CLAIM

14 Plaintiff has no business relationship with any Defendant in this Action. To his
 15 knowledge, he has never applied for services or expressed interest with any of them, ever, and
 16 had never heard of any of the Defendants prior to the acts alleged in this Action.

17 Plaintiff's cell number (718) 710 5784 ("5784") has been registered on the Federal Trade
 18 Commission national do-not-call registry www.donotcall.gov more than 31 days prior to March
 19 2, 2021. His (718) 710 5784 cell phone service plan is limited – any phone calls or texts to that
 20 cell number diminish the remaining talk time, data transfer, and text messages the cell phone
 21 may receive during that billing period.

22 Plaintiff uses his cell phone with phone number (718) 710 5784 as a residential telephone
 23 subscriber. Specifically, he obtained this phone and phone number to use in his individual
 24

1 capacity for non-commercial judicial branch advocacy and it is a Protected Computer as it is
2 used in a manner that affects interstate or foreign commerce or communication.

3 On or about 9:46AM, March 2, 2021, Plaintiff received a text message solicitation
4 seemingly from 98673 on his cell phone (718) 710 5784 while at his Clark County WA
5 residence. The text said:

6 Hi Wendy,
7 New mortgage program in
Lawrenceville!
8 See your savings now.
<http://370.bz/3/0AQJ-1HGPGR>
9 TxtSTOPtoEnd

10 Plaintiff will refer to this as the "Hi Wendy" text message. Plaintiff believes that the
11 0AQJ-1HGPGR portion of the URL <http://370.bz/3/0AQJ-1HGPGR> represents a customer
12 information profile with things like name (Wendy) and location (Lawrenceville), phone number
13 (718 710 5784), IP address, computer operating system type and version, and screen resolution.

14 While still at his Clark County WA residence, Plaintiff clicked the link on his cell phone
15 and was taken to webpage *homeequityquiz.com*, a website that solicits mortgage services.
16 Plaintiff looked over the *homeequityquiz.com* and could not ascertain the entity behind the
17 solicitation.

18 Plaintiff clicked on different website links, still trying to find the entity behind the
19 solicitation. Plaintiff thought that if he clicked on links and answered questions, perhaps one of
20 the web pages would reveal the entity behind the solicitation. Plaintiff then did and answer some
21 questions, but specifically used information completely different from the text solicitation so that
22 the website would learn he was not the "0AQJ-1HGPGR" Wendy they had solicited.

23 Two of the questions were Address and Zip Code, and Plaintiff entered "8912 NE 13th st"
24 for Address, and 98664 for ZIP Code (a real address in Vancouver Washington but Plaintiff was

1 not the owner) so that the website would see an address that did not match the “Lawrenceville”
 2 in the “Hi Wendy” solicitation.

3 Plaintiff expected that by answering questions with more different answers than the
 4 website was expecting, the website would realize he was not the “Wendy” for the URL link
 5 profile “<http://370.bz/3/0AQJ-1HGPGR>” and the website would “cut to the end” and disclose the
 6 entity behind the solicitation so he could tell that entity to stop texting him, or at least
 7 acknowledge that Plaintiff was not the “Wendy” they seemed to be expecting.

8 During and after answering the questions on the website, the website did not appear to
 9 disclose who the entity behind the solicitation was. The entity behind *homeequityquiz.com*
 10 should have known, and had ample reason to know, that Plaintiff was not the “Wendy” they were
 11 looking for, and to not telephone solicit Plaintiff.

12 However, apparently because of interacting with *homeequityquiz.com*, Plaintiff’s 5784
 13 cell phone started ringing with further unwanted solicitations. Plaintiff received the following
 14 further solicitations without his consent, all on his cell phone with phone number (718) 710
 15 5784. Most, and to Plaintiff’s recollection, all, of the following phone calls were received by
 16 Plaintiff while at his Clark County WA residence.

17 **Reliance First Capital**

18 Plaintiff received the following mortgage solicitation calls from Reliance First Capital LLC
 19 (“Reliance”), all on his cell phone with phone number (718) 710 5784:

20 1. A solicitation call from (877) 271 3082 received on March 2, at or about 12:50PM
 21 2. A solicitation call from (516) 566 4014 received on March 3, at or about 12:21PM
 22 3. A solicitation call from (516) 566 4014 received on March 8, at or about 12:36PM
 23 4. A solicitation call from (564) 397-2424 received on March 8, at or about 3:59PM
 24 5. A solicitation call from (564) 397-2424 received on March 8, at or about 4:00PM

- 1 6. A solicitation call from (516) 566 4014 received on March 9, at or about 12:13PM
- 2 7. A solicitation call from (877) 271 3082 received on March 29, at or about 8:40AM
- 3 8. A solicitation call from (877) 271 3082 received on April 14, at or about 1:10PM

4 **Loan Depot**

5 Plaintiff received the following mortgage solicitation calls from LoanDepot.com LLC
6 (“LoanDepot”) all on his cell phone with phone number (718) 710 5784:

- 7 1. A solicitation call from (855) 807 9606 received on March 2, at or about 10:43AM
- 8 2. A solicitation call from (855) 807 9606 received on March 2, at or about 10:58AM
- 9 3. A solicitation call from (855) 807 9606 received on March 2, at or about 11:15AM
- 10 4. A solicitation call from (855) 807 9606 received on March 2, at or about 11:48AM
- 11 5. A solicitation text from (949) 595 7108 received on March 2, at or about 12:13PM
- 12 6. A solicitation call from (877) 533 6619 received on March 4, at or about 2:44PM
- 13 7. A solicitation call from (877) 533 6619 received on March 4, at or about 2:45PM
- 14 8. A solicitation call from (877) 533 6619 received on March 5, at or about 8:51AM

15 **Global Equity Finance**

16 Plaintiff received the following mortgage solicitation calls from Global Equity Finance Inc
17 (“Global”), both on his cell phone with phone number (718) 710 5784:

- 18 1. A solicitation call from (619) 373 1239 received on March 2, at or about 10:42AM
- 19 2. A solicitation call from (619) 373 1239 received on March 2, at or about 10:44AM

20 **Nationwide Mortgage Bankers**

21 Plaintiff received the following telephone solicitation calls from Nationwide Mortgage
22 Bankers, Inc. (“Nationwide”), both on his cell phone with phone number (718) 710 5784:

- 23 1. A solicitation call from (929) 327 0799 received on March 3, at or about 6:08AM

2. A solicitation call from (631) 364 2175 received on March 3, at or about 7:39AM

Secure Rights

Plaintiff received the following telephone solicitation call from Secure Rights (a *doing business as* name for LeadPoint) on his cell phone with phone number (718) 710 5784:

1. A solicitation call from (929) 307 0799 received on March 2, at or about 2:12PM

Quicken Loans

Plaintiff received the following solicitations from Quicken Loans on his cell phone with phone number (718) 710 5784:

1. A solicitation call from (888) 241 6243 received on March 2, at or about 3:45PM

Home Advisor

Plaintiff received the following solicitation call from Home Advisor on his cell phone with phone number (718) 710 5784:

1. A solicitation call from (718) 575 4901 received on March 15, at or about 1:17PM

Cinch

Plaintiff received the following solicitation calls from Cinch:

1. A solicitation call from (718) 808 9677 received on March 2, at or about 11:02PM

LeadPoint

Days after receiving the March 2, 2021 text solicitation “Hi Wendy”, Plaintiff eventually figured out this message was sent from or on behalf of LeadPoint. Plaintiff deduced this by investigating the URL <http://370.bz/3/0AQJ-1HGPGR> in the “Hi Wendy” solicitation and determined that URL to be redirected to a lengthy URL on a *b.link* domain, probably for customer engagement and tracking purposes.

1 The lengthy *b.link* URL was then redirected to a lengthy URL on a *c.data3300.com*
 2 domain, which is LeadPoint branded URL. The *c.data3300.com* domain is the first time Plaintiff
 3 saw LeadPoint's name involved with *homeequityquiz.com*.

4 The lengthy URL on the *c.data3300.com* domain is then finally forwarded to a URL on
 5 the *homeequityquiz.com* ("HEQ") website.

6 Eventually, Plaintiff noticed very small, white text on a gray background on the HEQ website
 7 that admits "HomeEquityQuiz is owned by LeadPoint Inc."

8 Plaintiff received four further text message solicitations from or on behalf of LeadPoint, all
 9 on his cell phone with phone number (718) 710 5784:

- 10 1. A solicitation text from 98673 received on March 17, at 7:46AM, 2021.
- 11 2. A solicitation text from 98673 received on March 24, at 8:11AM, 2021.
- 12 3. A solicitation text from 98673 received on April 1, at 7:56AM, 2021.
- 13 4. A solicitation text from 98673 received on April 20, at 7:36AM, 2021.

14 Each text message was identical and led to the same *homeequityquiz.com* URL.

15 By March 7, Plaintiff was highly agitated by all the phone calls, particularly the early AM hour
 16 phone calls, and on that day sent LeadPoint the following do-not-call ("DNC") message via their
 17 communication portal www.leadpoint.com/contact/:

18 "Hello, you have obtained my number (718) 710 5784. I do not wish to receive any sales
 19 or marketing calls or text messages or voicemails from you or your clients or your
 20 customers or your affiliates or your partners. Please place my number (718) 710 5784 on
 your do-not-call list.

21 Thank you,

22 Nathen"

23 Plaintiff has screen shots of this message and that it was successfully submitted to
 LeadPoint. This message did not end the solicitation phone calls to 5784 from LeadPoint and
 24 LeadPoint's clients or customers or affiliates, or partners.

1 **29 total calls**

2 This case is about 29 total telephone solicitation phone calls that should be split into three
3 groups – 1 call, 17 calls, and 11 calls.

4 1 Call: Plaintiff's number was registered on the Federal Trade Commission do-
5 not-call-list registry more than 31 days before the first "Hi Wendy"
6 solicitation call on 3/2/2021.

7 17 Calls: Plaintiff interacted with the website *homeequityquiz.com* and received 17
8 more telemarketing calls.

9 11 Calls: On March 7, 2021, Plaintiff sent LeadPoint a *do-not-call-me, put-me-on-*
10 *your-do-not-call-list* ("DNC") message that certainly would have revoked
11 any consent the Defendants might think they had to telephone solicit
12 Plaintiff. Defendants placed 11 more solicitation calls to Plaintiff after he
13 sends his March 7 DNC request to LeadPoint.

14 **IV. RELIEF**

15 The Ninth Circuit has held that "a text message is a call within the meaning TCPA."
16 *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th Cir. 2009).

17 Plaintiff contends that because LeadPoint is in the data collection business, and the
18 Defendants have a business relationship to by which Plaintiff's information was passed from
19 LeadPoint to the other Defendants in exchange for financial compensation, each Defendant is
20 jointly and severally liable for all solicitation calls and text messages sent to Plaintiff's cell
21 phone with phone number (718) 710 5784.

22 Each Defendant sent multiple solicitation calls or texts to Plaintiff, or solicitation calls
23 and texts were made on their behalf.

1 Defendants violated the TCPA 47 U.S.C. 227(c)(5) by soliciting him on his cell phone
2 while he was registered on the FTC do-not-call list.

3 Defendants violated Telemarketing Sales Rule §310.4(b)(iii)(A) and §310.4(b)(iii)(B) by
4 placing solicitation phone calls to Plaintiff while he was registered on the FTC do-not-call list,
5 and after Plaintiff specifically asked LeadPoint to stop themselves and “your clients or your
6 customers or your affiliates or your partners” from calling and texting Plaintiff.

7 Defendants violated Telemarketing Sales Rule §310.4(c) by placing solicitation phone
8 calls to Plaintiff after 9PM and before 8AM in the Pacific Time Zone.

9 Defendants violated Telemarketing Sales Rule §310.3(4)(b) by making a false or
10 misleading statement to induce Plaintiff to pay for goods or services. Plaintiff believes the “Hi
11 Wendy” text messages are blasted out in volume without any regard to whether there is a “New
12 Mortgage Program” to induce the message recipients to pay for mortgage services.

13 Defendants violated Telemarketing Sales Rule §310.3(4)(b) by making a false or
14 misleading statement to induce Plaintiff to pay for goods or services. Plaintiff did not see any
15 evidence that any consumer could “See your savings now” by clicking on the link
16 <http://370.bz/3/0AQJ-1HGPGR>.

17 Plaintiff believes it is reasonable to infer that LeadPoint acquired the address information
18 “8912 NE 13th st” and ZIP Code “98664” before Defendants’ telephone solicited Plaintiff in a
19 way that gave rise to a private cause of action as alleged in this Complaint. Therefore, Plaintiff
20 believes Defendants should be held accountable for Washington State telemarketing laws.

21 Defendants violated Washington State RCW 19.158.040 by placing solicitation phone
22 calls to Plaintiff after 9PM and before 8AM in the Pacific Time Zone.

1 Defendants violated Washington State RCW 19.158.150 by soliciting Plaintiff on his cell
2 phone while they were not registered on with the Washington State department of Licensing, or
3 while working on behalf of an unregistered commercial telephone solicitor.

4 Washington State RCW 80.36.390(3) says

5 If, at any time during the telephone contact, the called party states or indicates that
6 he or she does not wish to be called again by the company or organization or
7 wants to have his or her name and telephone number removed from the telephone
8 lists used by the company or organization making the telephone solicitation, then:
9 (a) The company or organization shall not make any additional telephone
solicitation of the called party at that telephone number within a period of at least
one year;

10 Plaintiff believes that his March 7, 2021 DNC request is sufficient to trigger protection
11 under RCW 80.36.390(3) for the 11 solicitation calls placed to Plaintiff after March 7, 2021.

12 Washington State RCW 19.158.110(2) says:

13 If at any time during the telephone contact, the purchaser states or indicates that
14 he or she does not wish to be called again by the commercial telephone solicitor
15 or wants to have his or her name and individual telephone number removed from
16 the telephone lists used by the commercial telephone solicitor:
17 (a) The commercial telephone solicitor shall not make any additional commercial
telephone solicitation of the called party at that telephone number within a period
of at least one year;

18 Plaintiff believes that his March 7, 2021 DNC request is sufficient to trigger protection
19 under RCW 19.158.110(2) for the 11 solicitation calls placed to Plaintiff after March 7, 2021.

20 Plaintiff alleges that it is an unfair trade practice under Washington State RCW 19.86.020
21 that LeadPoint sent Plaintiff the February 2, 2021 "Hello Wendy" text message without
22 disclosing the sender in the text message, or the name of the sender being easily seen after
23 clicking the link in the text message, and then using Plaintiff's clicking on links and interacting
24 with the website as consent to send further telephone solicitations to Plaintiff.

1 Plaintiff asks for treble damages under TCPA 47 U.S.C. 227(c)(5) and the presumption
2 that violations of Washington State RCW 19.158 triple damages under the Washington State
3 Unfair Business Practices Act.

4 Plaintiff prays for all possible damages, in law and in equity, statutory, real, and punitive,
5 that he might be entitled too. These damages include but are not limited to court costs and
6 attorney fees.

7 **V. CERTIFICATION AND CLOSING**

8 Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my
9 knowledge, information, and belief that this complaint: (1) is not being presented for an improper
10 purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
11 (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or
12 reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so
13 identified, will likely have evidentiary support after a reasonable opportunity for further
14 investigation or discovery; and (4) the complaint otherwise complies with the requirements of
15 Rule 11.

16 I agree to provide the Clerk's Office with any changes to my address where case-related
17 papers may be served. I understand that my failure to keep a current address on file with the
18 Clerk's Office may result in the dismissal of my case.

19 Date of signing:

6/3/2021

20 Signature of Plaintiff



21 Printed Name of Plaintiff

Nathan Barton